

1 AN ACT concerning environment protection.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Environmental Protection Act is amended
5 by adding Title XVIII as follows:

6 (415 ILCS 5/Title XVIII heading new)

7 TITLE XVIII: BENEFICIAL USE DETERMINATION PROGRAM

8 (415 ILCS 5/59 new)

9 Sec. 59. Intent and purpose.

10 (a) It is the intent of this Title:

11 (1) To encourage the beneficial use in an
12 environmentally sound manner of certain materials that
13 would otherwise be managed or discarded as waste.

14 (2) To establish procedures for determining whether
15 a material no longer used for its originally intended
16 purpose:

17 (i) is being discarded, and should be
18 considered a waste; or

19 (ii) is being beneficially used, and should
20 not be considered a waste.

21 (3) To assure that a material no longer used for
22 its originally intended purpose is managed or discarded
23 in accordance with applicable State and federal laws and
24 regulations.

25 (b) If any provision of this Title conflicts with any
26 federal law, the federal law takes precedence over such
27 provision.

28 (415 ILCS 5/59.1 new)

29 Sec. 59.1. Applicability. This Title applies to

1 materials that, absent a beneficial use determination by the
2 Agency under this Title, would be considered waste. Any
3 generator or proposed user may use the procedures under this
4 Title to request a beneficial use determination from the
5 Agency for a specific material and process being conducted at
6 a specifically identified facility. The procedures under
7 this Title, however, do not apply to any of the following
8 materials:

9 (1) Clean construction or demolition debris as
10 defined in Section 3.160;

11 (2) Coal combustion waste as defined in Section
12 3.140;

13 (3) Coal combustion by-products as defined in
14 Section 3.135;

15 (4) Potentially infectious medical waste as defined
16 in Section 3.360;

17 (5) Landscape waste as defined in Section 3.270;

18 (6) Used oil as defined in Section 3.520;

19 (7) Solid or dissolved material in domestic sewage;

20 (8) Solid or dissolved materials in irrigation
21 return flows;

22 (9) Industrial discharges that are point sources
23 subject to permits under Section 402 of the Clean Water
24 Act;

25 (10) Source, special nuclear, or by-products
26 materials as defined by the Atomic Energy Act;

27 (11) Solid or dissolved material from any facility
28 subject to the federal Surface Mining Control and
29 Reclamations Act of 1977 or rules or regulations
30 thereunder or any law or regulations adopted by the State
31 of Illinois pursuant thereto;

32 (12) Any hazardous waste as defined in Section
33 3.220;

34 (13) Any waste regulated under the Toxic Substances

1 Control Act (P.L. 94-469), as amended; or

2 (14) Any material to be burned or incinerated.

3 (415 ILCS 5/59.2 new)

4 Sec. 59.2. Program. The General Assembly hereby
5 establishes a Beneficial Use Determination Program to be
6 administered by the Illinois Environmental Protection Agency
7 under this Title XVIII and in accordance with rules adopted
8 by the Illinois Pollution Control Board.

9 (415 ILCS 5/59.3 new)

10 Sec. 59.3. Review and approval.

11 (a) Application requirements. All requests for
12 determinations that are submitted under this Title must be
13 submitted in writing for review or approval in accordance
14 with this Section and rules adopted under Section 59.8. The
15 request must be on application forms prescribed and provided
16 by the Agency.

17 (b) Content of application. At a minimum, the
18 application must include the following:

19 (1) A demonstration that the material proposed for
20 the program is not a hazardous waste;

21 (2) A description of the material and its proposed
22 use;

23 (3) The physical and chemical characteristics, and
24 the organic and inorganic compounds, that comprise the
25 material, or a representative sample of such material,
26 and will comprise each proposed product;

27 (4) A description of the expected physical and
28 chemical characteristics, including volume, of any
29 leachate or runoff from the proposed process if the
30 material will be applied to the land;

31 (5) An application fee in accordance with Section
32 59.4 for each determination that is requested;

1 (6) A demonstration that there is a known or
2 expected market for the intended use of the material
3 under review and all of the proposed products by
4 providing one or more of the following:

5 (A) A contract, letter of intent, or other
6 written agreement to purchase the proposed product
7 or to have the material under review used in the
8 manner proposed;

9 (B) A description of how the proposed product
10 will be used;

11 (C) A demonstration that the proposed product
12 complies with industry standards and specifications
13 for that product; or

14 (D) Other documentation demonstrating that a
15 market exists for the proposed product or use, which
16 shall include submittal of documentation pursuant to
17 subparagraph (A); and

18 (7) A demonstration that the management of the
19 material under review will not adversely affect human
20 health and safety or the environment by providing a
21 control plan that includes, at a minimum, the following:

22 (A) The source of the material under review,
23 including contractual arrangements with the
24 supplier;

25 (B) Procedures for periodic testing of the
26 material under review and the proposed product to
27 ensure that the proposed material and product's
28 composition has not changed significantly;

29 (C) The disposition of any material that may
30 result from the manufacture of the product into
31 which the material under review is intended to be
32 incorporated;

33 (D) A description of the type of storage and
34 the maximum anticipated inventory of the material

1 under review before being used;

2 (E) Procedures for run-on and run-off control
3 of the storage areas for the material under review;
4 and

5 (F) A plan and implementation schedule of
6 management methods designed to minimize uncontrolled
7 dispersion of the material under review before and
8 during all aspects of its storage as inventory and
9 during beneficial use.

10 (c) Standard of review.

11 (1) The Agency shall determine in writing, on a
12 case-by-case basis, whether a proposal constitutes a
13 beneficial use based on adequate demonstration by the
14 applicant that all of the following criteria are
15 satisfied:

16 (A) That the proposed material management
17 activity:

18 (i) will not cause a release or threat of
19 release to the land, air, or water (surface or
20 ground water) that would exceed standards
21 promulgated by the Board; and

22 (ii) will otherwise provide adequate
23 protection of human health or the environment;

24 (B) That a market exists for the material
25 under review or the product into which the material
26 under review is proposed to be incorporated;

27 (C) That the nature of the proposed use
28 constitutes a legitimate reuse of the material as an
29 ingredient or raw material rather than disposal;

30 (D) That the material under review is intended
31 to function or serve as an effective substitute for
32 an analogous raw material; and

33 (E) That a material that is proposed for
34 incorporation into a manufacturing process does not

1 need to be decontaminated or otherwise specially
2 handled or processed before such incorporation in
3 order to minimize loss of material or to provide
4 adequate protection of human health or safety or the
5 environment.

6 (2) Except as otherwise provided by Section 59.5,
7 any beneficial use determination granted pursuant to the
8 provisions of this Title shall be granted for a period
9 not to exceed 5 years. If the applicant desires a
10 continuation of the beneficial use determination beyond 5
11 years, the applicant must reapply for a new determination
12 90 days before the expiration of the 5-year period and
13 must send the Agency the appropriate fee under Section
14 59.4.

15 (d) Certification. All applications submitted for
16 review must include a certification by the applicant that all
17 the information presented is true, accurate, and complete to
18 the best knowledge of the applicant. Where applications for
19 a beneficial use determination include technical information
20 that would require the supervision of a Licensed Professional
21 Engineer or Licensed Professional Geologist, as appropriate,
22 there must also be a certification by the LPE or the LPG that
23 the information compiled was prepared under his or her
24 personal supervision and, to the best of his or her knowledge
25 and belief, the information is true, accurate, and complete.

26 (e) Agency review.

27 (1) Within 90 days after receipt by the Agency of a
28 request meeting the requirements of this Section, the
29 Agency shall issue a letter to the applicant approving,
30 disapproving, or approving with conditions the request
31 submitted. The applicant may waive this deadline in
32 writing. If a request is disapproved or approved with
33 conditions, the Agency's letter shall set forth the
34 reasons for the disapproval or conditions. Any letter

1 disapproving a request or approving a request with
2 conditions shall be sent by certified mail, return
3 receipt requested.

4 (2) In approving beneficial use determinations, the
5 Agency may impose such conditions as it may deem
6 necessary to accomplish the purposes of this Act that are
7 not inconsistent with the rules adopted by the Board
8 under this Title.

9 (3) If the Agency disapproves a request or approves
10 a request with conditions, the applicant may, within 35
11 days of receipt of the Agency's decision, petition for a
12 hearing before the Board to contest the decision. If the
13 Agency fails to act within 90 days after the receipt of a
14 request, the request shall be deemed granted until such
15 time as the Agency has taken final action to approve,
16 disapprove, or approve with conditions the request.
17 Appeals to the Board must be in the manner provided for
18 the review of permits in Section 40.

19 (4) The Agency may adopt procedural rules, as may
20 be necessary to carry out its duties under this Title,
21 that are not inconsistent with the requirements of this
22 Title.

23 (415 ILCS 5/59.4 new)

24 Sec. 59.4. Fees. The fee for a review conducted under
25 this Title is in addition to any other fees or payments that
26 are legally applicable. The fee for a request for a
27 beneficial use determination under this Title is \$1,250 for
28 each determination. The application fee must be made payable
29 to the State of Illinois, for deposit into the Environmental
30 Protection Permit and Inspection Fund. All fees collected
31 are non-refundable. The fee under this Title will not apply
32 to government applicants that have agreed to pay the Agency's
33 costs to review the application under an independent

1 agreement. Pursuant to appropriation, the Agency shall use
2 the fees collected under this Title for development and
3 administration of the Beneficial Use Determination Program.

4 (415 ILCS 5/59.5 new)

5 Sec. 59.5. Revocation. The Agency may seek revocation
6 from the Board on a beneficial use determination in
7 accordance with procedures adopted pursuant to Section 59.8.
8 Either of the following may constitute grounds for revocation
9 of a beneficial use determination:

10 (1) demonstration that a determination was made on
11 the basis of fraud or misrepresentation; or

12 (2) demonstration that, due to a change in law, the
13 determination no longer satisfies the intent or purpose
14 for a beneficial use under this Title.

15 (415 ILCS 5/59.6 new)

16 Sec. 59.6. Effect of a beneficial use determination.

17 (a) As long as all applicable conditions of the
18 beneficial use determination are complied with, the material
19 or process is not a waste. If any applicable condition of
20 the beneficial use determination is not complied with, the
21 material or process is a waste.

22 (b) The effective date of a beneficial use determination
23 is the date of issuance, will be prospective only, and will
24 be for a period of 5 years unless otherwise stated in the
25 determination.

26 (415 ILCS 5/59.7 new)

27 Sec. 59.7. Beneficial Use Determination Advisory
28 Committee.

29 (a) There is hereby established a 10-member Beneficial
30 Use Determination Advisory Committee, which shall be
31 appointed by the Governor within 6 months after the effective

1 date of this Title. The Committee shall include one member
2 recommended by the Illinois State Chamber of Commerce, one
3 member recommended by the Illinois Manufacturers'
4 Association, one member recommended by the Consulting
5 Engineers Council, one member recommended by the National
6 Solid Waste Management Association, one member recommended by
7 the Illinois Recycling Association, one member from an
8 environmental advocacy group, one member from a public
9 interest community organization, one member from a community
10 development corporation, one member from the Illinois
11 Department of Natural Resources, and one member from the
12 Illinois Department of Commerce and Community Affairs.
13 Members shall serve without compensation.

14 (b) The Committee shall review, evaluate, and make
15 recommendations regarding proposed rules to be adopted under
16 Section 59.8. The Committee shall terminate its functions not
17 more than 24 months after the effective date of this Title.

18 (415 ILCS 5/59.8 new)

19 Sec. 59.8. Board rules.

20 (a) Within 12 months after the effective date of this
21 Title, the Agency, after consideration of the recommendations
22 of the Committee, shall propose rules prescribing procedures
23 and standards for administration of this Title. Within 12
24 months after receipt of the Agency's proposed rules, the
25 Board shall adopt, pursuant to Sections 27 and 28, rules that
26 are consistent with this Title.

27 (b) Prior to the effective date of the rules adopted
28 under this Section, the Agency is authorized to conduct
29 reviews of and make determinations relative to the
30 applications under this Title. The Agency is authorized to
31 prepare and distribute guidance documents relative to its
32 administration of this Title. Guidance documents prepared
33 under this Title shall not be considered rules for purposes

1 of the Illinois Administrative Procedure Act.

2 (415 ILCS 5/59.9 new)

3 Sec. 59.9. Severability.

4 The provisions of this Title XVIII are severable under
5 Section 1.31 of the Statute on Statutes.

6 Section 99. Effective Date. This Act takes effect takes
7 effect upon becoming law.